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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 IN THE MATTER OF

No. CV11-1285-PHX-DGC

10 Donald W. Parrillo

**ORDER**

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12 Donald W. Parrillo,

13 Appellant,

14 v.

15 Nancy Reilly and Zane D. Smith,

16 Appellees.  
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18 On June 29, 2011, Appellant Donald W. Parrillo's appeal of a bankruptcy court  
19 order was lodged in this Court. Doc. 1. Appellant was informed that he must, within 14  
20 days, designate the items to be included in the record on appeal and serve a copy on the  
21 Appellees. Doc. 1 at 2. Appellant was also notified that his failure to comply with  
22 applicable rules could result in dismissal of his appeal. Doc. 2 at 2. Despite these  
23 instructions, Appellant did not designate the record on appeal. Appellant was advised of  
24 this failure in an order dated October 20, 2011, but never responded with a designation of  
25 the record on appeal. Doc. 3.

26 On January 9, 2012, the Court entered a scheduling order that required Appellant  
27 to file his opening brief within 14 days. Doc. 4. The order again informed him that his  
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1 appeal could be dismissed if he failed to comply with applicable rules and orders. *Id.* at  
2 2. Appellant filed a motion seeking to extend the briefing schedule for 180 days, but  
3 failed to provide any substantiation for his request. As a result, on February 9, 2012, the  
4 Court denied Appellant's motion for an extension of time. Doc. 9. Appellant thereafter  
5 failed to file his opening brief.

6 In response to Appellant's request for an extension of time, Appellees filed a  
7 motion to dismiss. Doc. 8. The motion noted that Appellant had failed to designate the  
8 record on appeal as required by applicable rules. *Id.* In the Court's order denying  
9 Appellant's request for an extension of time, the Court specifically stated that it would  
10 rule on the motion to dismiss after briefing was completed. Doc. 9. Appellant failed to  
11 respond to the motion to dismiss.

12 Appellant clearly has been warned that his failure to comply with applicable rules  
13 and Court orders could result in dismissal of his appeal. *See* Doc. 1 at 11; Doc. 4 at 2.  
14 He nonetheless has failed to designate his record on appeal, file an opening brief, or  
15 respond to the motion to dismiss. This appeal has been pending for almost one year with  
16 virtually no activity because of Appellant's repeated failures to satisfy his obligations.

17 The Ninth Circuit has developed a five part test for determining whether a  
18 dismissal sanction is just: (1) the public's interest in expeditious resolution of the  
19 litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the party  
20 seeking sanctions; (4) the public policy favoring disposition of cases on the merits; and  
21 (5) the availability of less drastic sanctions. *Valley Engineers, Inc. v. Electric*  
22 *Engineering Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998). The first three factors favor  
23 dismissal of this appeal: the appeal cannot be resolved expeditiously when Appellant  
24 fails to comply with applicable rules, the Court cannot effectively manage its docket in  
25 such a situation, and the resulting delay prejudices Appellees. The fourth factor weighs  
26 against dismissal. In considering the fifth factor, the Court has contemplated less drastic  
27 sanctions, but because Appellant repeatedly has demonstrated his failure to comply with  
28 rules and orders, the Court concludes that dismissal is the only appropriate sanction.

